BILL 2012-58

****** Third Reading ******

Agenda Item

TO: Mayor and City Council

FROM: Mark S. Gaugh, City Manager

DATE: December 17, 2012

RE: Pole Attachment Ordinance

Issues

The City's pole attachment agreements with Mediacom and CenturyLink are expired and need to be renewed. The Mediacom agreement was made in May, 2002 for a term of ten years. CenturyLink's agreement (originally GTE) was effective in 1991. The rental rate for both was $5.00 per pole per year. That rate is currently well under the market rate used by utilities in our area. The new rates are on a graduated scale in order to get us to a more accurate rate over a period of time. In 2013, the rate will be $10.00 and by 2016 will be $15.00 per pole per year. The new rates will be comparable with the lower end of pole rates currently charged, based on comparisons with similar utilities in the market. So, I believe the new rates will be fair to our telecommunication providers, while still providing compensation to the City for the use of its pole infrastructure.

Recommendation

Staff recommends that the ordinance be approved on first reading. Two readings are recommended.

Bill 2012-58

AN ORDINANCE FOR THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI ESTABLISHING POLE ATTACHMENT FEES AND REQUIREMENTS RELATED TO THE ATTACHMENT OF PRIVATELY-OWNED FACILITIES TO POLES OWNED BY THE CITY AND ADOPTING PROCEDURES RELATING THERETO

WHEREAS, the City is authorized to the establish fees and procedures for the license, lease or use of public facilities; and

WHEREAS, entities providing services through facilities located in the rights-of-way often seek to attach their equipment and facilities to poles and related structures owned by the City within the rights-of-way; and

WHEREAS, the City incurs certain costs associated with allowing such attachments, including but not limited to the administrative and actual costs of working with such attachments, seeking compliance with applicable requirements by such attaching entities, and otherwise, and therefore the City deems it necessary to establish pole attachment rental rates for private use of City-owned poles to ensure that the public is not unfairly bearing too great a burden from such private uses and that such public property is not being used for private purposes without fair compensation to the public;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAMERON, MISSOURI, AS FOLLOWS:

Section 1: Chapter 10.5, Article III, Rights-of-Way and Communications, of the City Code is hereby amended by adding a new Division 3 thereto to read as follows:

Division 3. – Pole Attachments

Sec. 10.5-101. - Pole Attachments.

A. *Attachment Agreement and Fee Required.* No person or entity, other than the City or a department thereof, shall attach or maintain any fixture to or place or maintain any facilities or wires on any City facilities, including any utility pole or other fixture or facility of the City, within City rights-of-way or easements without: (1) a valid and unexpired pole attachment agreement approved by the City Council after the date hereof and executed by such applicable person or entity, and (2) payment of a pole attachment fee as set forth in Subsection B below, or as may be hereinafter approved as alternative lawful compensation in a pole attachment agreement approved by the City Council after the date hereof, or such other amount as may be established hereinafter by the City Council by resolution or ordinance. Failure to hold and maintain a current and

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valid pole attachment agreement with the City shall not excuse payment of the pole attachment fee at the rate required herein and plus additional penalties. Where a pole attachment agreement expires, and in addition to any penalties or other requirements, the licensee during any holdover period shall pay monthly one-twelfth (1/12) of the rate above or one-twelfth (1/12) of the rate in the expired agreement, whichever is greater, until a valid agreement is obtained or the attachments are removed. The licensee shall indemnify and be responsible to pay all costs incurred by the City in any way due or arising from any such attachment or violation of any provision hereof or of any pole attachment agreement including, but not limited to, attorneys' fees, except as may be otherwise expressly provided by agreement.

B. *Pole Attachment Fee Rates*. The following pole attachment fee rates are stated on a per attachment, per pole, per year basis:

2013 = $10.00 per attachment, per pole, per year
2014 = $11.50 per attachment, per pole, per year
2015 = $13.00 per attachment, per pole, per year
2016 = $15.00 per attachment, per pole, per year

Each year thereafter, the pole attachment fee rate shall increase by 3% over the previous years' pole attachment fee rate. Each attachment of any of a licensee's facilities in direct contact with or otherwise supported by a pole or other City facilities shall be considered a separate pole attachment. An "attachment" shall include, but not be limited to, each line, wire, conduit, or other approved equipment physically connected directly or indirectly to the applicable pole or other city facility.

C. *Payment and Affidavit--When.* Unless otherwise provided by pole attachment agreement, amounts due under this paragraph shall be paid to the City not later than January fifteenth (15th) of each year for the current calendar year (or pro rata portion thereof if less than a full year) and any amount unpaid after such date shall accrue interest payable to the City at the rate of nine percent (9%) per annum, compounded monthly. Each payment shall be accompanied by an affidavit of the number of attachments to City owned poles, fixtures, or facilities which exist as of January 1 and computation of the fee based on the number of attachments as of that date.

D. *Agreement Required.* No pole attachment shall be authorized except by authorized pole attachment agreement, which shall include such provisions as necessary to protect the public interest and provide for payment of the required compensation consistent with this Section. An application may be required containing such information as may be necessary to determine the appropriateness of the application and may contain a fee requirement in an amount sufficient to reimburse the City its costs or such other reasonable basis as permitted by law. A franchise or public ways use permit agreement shall not be deemed to authorize pole attachments unless hereinafter expressly so provided therein. No pole attachment agreement shall be granted to any person or entity

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unless such person has a valid franchise or public ways use permit agreement with the City, whether separately granted or expressly incorporated in the pole attachment agreement. A pole attachment agreement shall be reviewed and approved, denied or conditioned as the public interest dictates subject to all applicable law. Nothing herein shall be interpreted to contravene any unwaived rights in a duly authorized and lawful existing agreement with the City.

E. *Penalty for Violation.* Any person or entity violating any provision of this Section shall, in addition to being subject to all other remedies herein, be deemed guilty of an offense and upon conviction thereof shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). Each day's violation shall constitute a separate offense.

Section 2: Chapter 10.5, Article III, Rights-of-Way and Communications, of the City Code is hereby amended replacing Section 10.5-208 with a new Section 10.5-208 to read as follows:

Sec. 10.5-208. - Compensation for city property or city facilities

The city may, in its sole and absolute discretion, grant rights to use city property or city facilities. If the right is granted, by lease, license, use permit, franchise or other manner, to use and occupy city property for the installation of facilities, the compensation to be paid shall be fixed by the city. Unless otherwise provided, use or installation of any facilities in, on or over non-rights-of-way public property of the city, or on city facilities shall be permitted only if a lease agreement, pole attachment agreement or other separate written approval has been negotiated and approved by the city council with such reasonable terms as the council may require, in accordance of Division 3 of this Article. Such agreements shall convey no property interest in the city property or city facilities to the applicant.

Section 3: Subsection 10.5-226(c) of Chapter 10.5, Article III, Rights-of-Way and Communications, of the City Code is hereby amended by replacing Paragraph 2 thereof with a new Paragraph 2 to read as follows:

(2) A public ways use permittee with permission to install overhead facilities shall install its communications facilities on pole attachments to existing utility poles only, and then only if surplus space is available and only pursuant to a pole attachment agreement under Division 3 of this Article.

Section 4: Termination of agreements. Nothing herein shall be deemed or interpreted to allow violation of any lawful existing contractual rights, if any. Nothing herein shall be interpreted to contravene any unwaived rights in a duly authorized and lawful existing agreement with the City. Any such right or claimed right shall be deemed terminated consistent with law at the earliest date permissible and the user shall be obligated to replace such terminated

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contract with a new agreement consistent with this Section. Notice is hereby given of such termination of any claimed prior contractual right to use City poles that is not fully consistent with this Section.

Section 5: All City Code provisions expressly in conflict with this Ordinance are hereby repealed. The City Manager shall be authorized to implement this provision with any additional actions as may be necessary to fully implement and document the purposes of this Ordinance.

Section 6: The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid unless such court finds that the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council would have enacted the valid portions without the invalid one, or unless such court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 7: This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed and approved on first reading this 17th day of December 2012.
Passed and approved on second reading this 7th day of January 2013.
Passed and approved on third and final reading this 15th day of January 2013.

_____
Presiding Officer at Meeting

ATTEST:

_____
City Clerk

_____
Mayor

ATTEST:

_____
City Clerk

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